

May 29, 2013

## **Attachment: What Oregon Needs to Do to Meet Remaining Conditions**

**Additional Forestry Measures:** Oregon needs to explain how it intends to implement specific BMPs, backed by enforceable authority, to:

- protect medium, small, and non-fish bearing streams
- protect high-risk landslide areas
- effectively address the impacts of road operation and maintenance, particularly legacy roads; and
- ensure the adequacy of stream buffers for the application of certain chemicals.

**OSDS:** NOAA and EPA will accept a program that either inspects systems at the time of sale of the property or that focuses inspections on identified problem areas (e.g., lots with older OSDS, known high failure rates, or known OSDS-induced water quality problems) consistent with available resources, with a sufficient commitment on the part of the State to implement the strategy over time. Critical to this second approach is the identification of all potential problem areas within the State's coastal nonpoint management area.

Given Oregon's original approach to develop rules that would require onsite system inspections at the time of property transfer in the coastal nonpoint program management area is no longer an option, Oregon could address the OSDS requirement in several ways:

- Demonstrate that counties in the coastal nonpoint management area have ordinances requiring regular inspections or pump-outs of existing residential OSDS such that 90% of residential OSDS are inspected or pumped out over the next 15 years;
- Demonstrate that those lending institutions that account for 90% of loans for homes served by OSDS in the coastal nonpoint management area require an OSDS inspection by a qualified inspector; or
- Demonstrate that through a variety of state, local, and voluntary programs (including dedicated funding to support voluntary OSDS inspection programs) the state will reach 90% of the existing systems within the coastal nonpoint management area within 15 yrs. Tracking and evaluation are required for strategies that rely on voluntary approaches.

Oregon's revised approach (more complete disclosure and targeted outreach during property transactions and an MOU between OAR and ODEQ) has potential, but would need to show alignment with the third bullet above.

**New Development:** As EPA and NOAA understand, Oregon still plans to address this condition through its Urban/Rural TMDL Implementation Plan Guidance. In order for this to be a successful approach, Oregon needs to finalize the guidance and:

- Ensure the guidance provides unambiguous instruction to the DMAs that practices consistent with the new development measure need to be incorporated into their TMDL Implementation Plans (i.e., practices that will reduce post-development TSS loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels);
- Clarify that ODEQ does have the authority to require implementation of the new development measures, as necessary, and stated in the September 23, 2005, attorney general's opinion and ensure that there is no ambiguous language about this in the Implementation Guidance; and
- Develop a process/schedule for training/educating DMAs about the new guidance to ensure that they will include practices consistent with the CZARA new development measure in their TMDL Implementation Plans.

If Oregon believes that the Urban/Rural TMDL Implementation Plan Guidance will no longer enable the state to satisfy the new development measure, at a minimum, Oregon could:

- Develop a stormwater guide that includes practices consistent with the CZARA and outreach program for guide to strongly encourage the new develop practices to be adopted, including demonstrating the state is putting resources (funding and staff time) behind the effort; and,
- Develop methods for tracking and evaluating this voluntary stormwater program.

**Other Management Measures:** Because nearly 10 years have passed since some of the interim decision rationales for the other conditions were written, EPA and NOAA will need to work closely with the state to ensure that all rationales reflect the current status of Oregon's programs and include recent activities, as appropriate, that could further strengthen the rationale for how the state has satisfied each condition.

**Other Considerations:**

NOAA and EPA are mindful of what is going on concurrently in Washington that may have an impact on Oregon, especially related to agriculture issues. The Pacific Northwest Tribes are concerned about the adequacy of Federal programs, including CZARA, for sufficiently protecting water quality and salmon habitat. They are specifically focused on ensuring adequate riparian buffers, especially around agriculture activities. While the Federal agencies are still deciding how we can use the suite of federal programs to address the Tribes' concerns and what role CZARA may play given that Oregon has salmon too, we'll need to be consistent in our reviews of Washington and Oregon's Coastal Nonpoint Programs.



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